NORA L. SANFORD (ON RECONSIDERATION)

IBLA 78-68 Decided April 28, 1982

Petition for reconsideration of Nora L. Sanford, 43 IBLA 74 (1979), in which the Board affirmed the decision of the Alaska State Office, Bureau of Land Management, rejecting part of Native allotment application F-12554.

Petition granted; prior decision and decision appealed from vacated; case remanded.

1. Alaska: Native Allotments

   The Department of the Interior is authorized to approve only Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that she had delivered her application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

2. Alaska: Native Allotments

   Where conflicting evidence contained in a file raises factual issues, BLM should initiate a Government contest so that the factual issues can be resolved at a hearing.

   Nora L. Sanford, 43 IBLA 74 (1979), vacated; case remanded.

APPEARANCES: Daniel L. Callahan, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Nora L. Sanford has petitioned the Board for reconsideration of its decision Nora L. Sanford, 43 IBLA 74 (1979), in which we affirmed the *decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting Native allotment application F-12554 with respect to parcel C. The State Office had found that appellant had failed to file timely a proper and complete application.

In our decision, we noted that the Bureau of Indian Affairs (BIA) initially filed an application on appellant's behalf for two parcels of land (A and B) on February 3, 1970. On November 17, 1972, BIA sent a memorandum to BLM adding parcel C to the claim. The memorandum stated: "The enclosed Native Allotment parcels should have been included in the original application, through our error I wish to include the following parcels for Nora L. Sanford, Edward Mayo, Jr., Sarah Joe, and Erick Carlson." The description for parcel C was attached. The State Office, however, treated this submission as a new application for new land, and rejected the application as untimely. We affirmed.

Appellant notes that in Eleanor H. Wood, 46 IBLA 373 (1980), and William Yurioff, 43 IBLA 14 (1979), the Board expressly recognized that Native allotment applicants had filed applications with BIA with the land descriptions blank for BIA officials to fill in with accurate land descriptions. Appellant asserts that those decisions recognize a right to a hearing where there is a disputed issue of fact with respect to whether an application was pending on December 18, 1971.

In her petition for reconsideration, appellant alleges the following facts concerning the filing of her application:

> Applicant Nora Sanford submitted her Allotment application to an employee of the BIA on January 21, 1970. Ms. Sanford completed her application, including signature, leaving the portion of the application dealing with parcel descriptions blank for the BIA representative to fill in. At the same time she marked on a map the locations of the parcels she wished to apply for and that information was to be filled in on the application by the BIA officer. (Affidavits of Nora Sanford and William Mattice)
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> This was the normal procedure for collecting allotment applications in the Upper Tanana area immediately prior to the passage of ANCSA, 43 U.S.C. § 1601 et. seq. (December 18, 1971). (Affidavit of William Mattice.) However, through some oversight, two of the four parcels Ms. Sanford had applied for were not included in the application that was forwarded to the BLM from the BIA. The description to parcel "C" was forwarded to the BLM along with a memorandum dated November 17, 1972 (attached to

> Affidavit of William Mattice as exhibit "A"). There was not room on the actual application for all four descriptions to be included in full. Apparently because they were written on separate sheets, descriptions to parcels "C" and "D" were not attached to the application when it went to BLM.

(Petition for Reconsideration at 2).

[1] By section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1976), the Department of the Interior is authorized to approve only Native allotment applications which were pending before the Department on December 18, 1971, the date of that Act. William Yurioff, supra. In a memorandum to the Director, BLM, dated October 18, 1973, Assistant Secretary Horton stated:

> This phrase [pending before the Department on December 18, 1971] is interpreted as meaning that an application for a Native allotment must have been on file in any bureau, division, or agency of the Department of the Interior on or before December 18, 1971. The Department has no authority to consider any application not filed with any bureau, division, or agency of the Department of the Interior on or before said date. Evidence of pendency before the Department of the Interior on or before December 18, 1971, shall be satisfied by any bureau, agency or division time stamp, the affidavit of any bureau, division or agency officer that he received said application on or before December 18, 1971, and may also include an affidavit executed by the area director of BIA stating that all applications transferred to BLM from BIA were filed with BIA on or before December 18, 1971. [Emphasis in original.]

Like Sanford, each appellant in William Yurioff, supra, had made offers of proof to support his or her allegations that an application was filed with the Bureau of Indian Affairs prior to December 18, 1971. For example, each applicant had submitted his or her own affidavit as well as an affidavit or statement from an official of the Bureau of Indian Affairs. We ruled it appropriate to remand each case for readjudication under the above guidelines. Id. at 15. We noted BIA's practice of assisting applicants in preparing their land descriptions to meet regulatory requirements after the applicants had provided BIA with less formal descriptions of the land. Our decision held that where an applicant had provided such a description of the parcel to BIA prior to the statutory deadline, BIA's failure to include that description in the application transmitted to BLM would not prejudice consideration of that application. See id. at 17. We noted, however, that where an applicant had applied for more than one parcel, a general statement that she had an application on file with BIA was not sufficient to establish that an application for a particular parcel under review had been timely filed.

[2] Because evidence contained in the file raises factual issues regarding the pendency of appellant's application on or before December 18, 1971, BLM should initiate a Government contest so that the factual issues can be resolved at a hearing. See, e.g., Eleanor H. Wood, supra at 380. Because the land description in this case was changed after December 18, 1971, the applicant must establish by a preponderance of the evidence that the change was made for correction only and not for the purpose of applying for new land. See Annie Soplu, 22 IBLA 38 (1975). At the hearing all witnesses should be mindful of their obligations under 18 U.S.C. § 1001 (1976). BLM should give notice of the initiation of contest proceedings to Dot Lake Native Corporation, which has protested Sanford's application pursuant to section 905(a)(5)(A) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980). 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted; our prior decision and the decision appealed from are vacated, and the case is remanded for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

1/ Dot Lake Native Corporation's protest precludes automatic approval of appellant's allotment application under section 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), and requires adjudication of the application under the terms of the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976).